

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF PHARMACY  
AND KIMBERLY SUE HARTMAN**

Kimberly Sue Hartman ("Licensee") and the Missouri State Board of Pharmacy enter into this Settlement Agreement for the purpose of resolving the question of whether Licensee's license as a pharmacist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the state of Missouri and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo, as amended, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensee acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against her and, subsequently, the right to a disciplinary hearing before the Commission at which time she may present evidence in mitigation of discipline; and the right to recover attorney's fees

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

incurred in defending this action against her license. Being aware of these rights provided her by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to her.

Licensee acknowledges that she has received a copy of the investigative report and other documents relied upon by the Commission in determining there was cause for discipline, along with citations to law and/or regulations the Commission believe were violated. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Commission that Licensee's license as a pharmacist, License Number 043125, is subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621, Cum. Supp. 2005 and Chapter 333 RSMo, as amended.

#### **Joint Stipulation of Facts**

1. The Missouri Board of Pharmacy ("Board") was established pursuant to § 338.110, RSMo, for the purpose of executing and enforcing the provisions of §§ 338.010 through 339.198, RSMo, as amended.
2. Respondent Kimberly Sue Hartman ("Licensee") is licensed by the Board as a state-licensed pharmacist, License No. 043125. Licensee's license was at all times relevant, and is now, current and active.

3. At all relevant times herein, Licensee was employed at Walgreens Pharmacy (“Walgreens”) in O’Fallon, Missouri, as a Pharmacist.

4. In her position as a Pharmacist, Licensee had developed a relationship of professional trust with Walgreens and its customers.

5. On or about March 6, 2007, a patient came to Walgreens to fill a prescription for the pre-natal vitamin product “Materna.”

6. On or about March 6, 2007, the patient’s prescription for the pre-natal vitamin product “Materna” was scanned and typed into the Walgreens computer system as the chemotherapy drug “Matulane.”

7. On or about March 6, 2007, as part of her duties as a Pharmacist, Licensee reviewed the scanned prescription, compared the scan to data entered by a technician, and approved the incorrectly entered information.

8. On or about March 6, 2007, the patient received the chemotherapy drug “Matulane” instead of the pre-natal vitamin product “Materna.”

9. In or around May 2007, the patient, who had been pregnant, suffered a miscarriage.

### **Joint Conclusions of Law**

11. Section 338.010.1, RSMo (Cum. Supp. 2007), provides:

1. The “practice of pharmacy” means the interpretation, implementation, and evaluation of medical prescription orders, including receipt, transmission, or handling of such orders or facilitating the dispensing of such orders; the designing,

initiating, implementing, and monitoring of a medication therapeutic plan as defined by the prescription order so long as the prescription order is specific to each patient for care by a specific pharmacist; the compounding, dispensing, labeling, and administration of drugs and devices pursuant to medical prescription orders and administration of viral influenza vaccines by written protocol authorized by a physician for persons twelve years of age or older as authorized by rule; the participation in drug selection according to state law and participation in drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records thereof; consultation with patients and other health care practitioners about the safe and effective use of drugs and devices; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy. No person shall engage in the practice of pharmacy unless he is licensed under the provisions of this chapter. This chapter shall not be construed to prohibit the use of auxiliary personnel under the direct supervision of a pharmacist from assisting the pharmacist in any of his duties. This assistance in no way is intended to relieve the pharmacist from his responsibilities for compliance with this chapter and he will be responsible for the actions of the auxiliary personnel acting in his assistance. This chapter shall also not be construed to prohibit or interfere with any legally registered practitioner of medicine, dentistry, podiatry, or veterinary medicine, or the practice of optometry in accordance with and as provided in sections 195.070 and 336.220, RSMo, in the compounding or dispensing of his own prescriptions.

12. Section 338.055.2, RSMo (Cum. Supp. 2007), as amended, provides grounds upon which a Licensee may be disciplined, stating in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her

certificate of registration or authority, permit or license for any one or any combination of the following causes:

\* \* \*

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

\* \* \*

(13) Violation of any professional trust or confidence[.]

13. By misfilling a prescription for “Materna” with the chemotherapy drug “Matulane,” Licensee exhibited misconduct in the performance of the functions or duties of a pharmacist giving cause to discipline Licensee’s license pursuant to § 338.055.2(5), RSMo (Cum. Supp. 2007).

14. By misfilling a prescription for “Materna” with the chemotherapy drug “Matulane,” Licensee violated the professional trust and confidence Walgreens and the public placed in her by nature of her professional licensure and employment with Walgreens giving cause to discipline Licensee’s license pursuant to § 338.055.2(13), RSMo (Cum. Supp. 2007).

### **JOINT DISCIPLINARY ORDER**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered into by the Board in this matter under the authority of §§ 338.110, 536.060, 621.045.3, and 621.110, RSMo.

1. **Licensee's license as a pharmacist is hereby PUBLICLY CENSURED.**
2. No additional discipline shall be imposed by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the Board as a contested case in accordance with the provisions of Chapter 536, RSMo.
3. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Licensee of Chapter 338, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.
4. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Board or may be discovered.
5. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.
6. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board as required by Chapters 338, 610, and 620, RSMo, as amended.
7. Licensee, together with her partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Board, its respective members, employees, agents and attorneys

including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

8. Licensee understands that she may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

9. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does

not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

MISSOURI BOARD OF PHARMACY

Kimberly Sue Hartman 11/10/08  
Kimberly Sue Hartman Date

Thomas Glesler 12-16-08  
Executive Director Date  
Missouri Board of Pharmacy  
Christ Inspect

CARSON & COIL, P.C.

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ATTORNEYS FOR PETITIONER  
MISSOURI BOARD OF PHARMACY